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## In Re Requests Of

LIBERTY CABLE CO., INC.

**For Special Temporary Authority**

### For Private Operational Fixed

## Microwave Radio Service

New York, New York

**Federal Communications Commission  
Office of Secretary**

WT DOCKET NO. 96-41

To: Hon. Richard L. Sippel, Administrative Law Judge

Pursuant to the Presiding Judge's Order, Time Warner Cable of New York City and Paragon Communications ("TWCNYC") hereby file the attached redacted copy of a letter dated January 2, 1997. Order, WT Docket No. 96-41 (rel. Jan. 6, 1997). In accordance with the Order, TWCNYC is also providing a complete copy of the letter to the Federal Communications Commission, filed under seal, today.

Respectfully submitted,

R. Bruce Beckner / dam  
Arthur H. Harding

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Dated: June 20, 1997

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January 2, 1997

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**VIA FACSIMILE**

The Hon. Richard L. Sippel  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street N.W.  
Washington, D.C. 20554

Re: In the Matter of Liberty Cable Company, Inc. WT Docket No. 96-41

Dear Judge Sippel:

I have received Mr. Beglieter's letter to you of December 31, 1996 regarding a proposed re-scheduling of the "mini-hearing" to commence the taking of testimony on Friday, January 10, rather than on Monday, January 13, the date established by your Order released December 17, 1996.

I urge you to deny Mr. Beglieter's request. At Mr. Beglieter's request, the Presiding Judge established early hearing dates in the last prehearing conference, and Mr. Beglieter has pointed to no new circumstance of significance that justifies a change at this late date. At best, the proposed change will advance the schedule of the proceedings by half a day. However, that advancement will come at the cost of considerable disruption to my schedule and to that of my client — schedules that were made in reliance on the dates that were agreed to by Liberty and established by your Order of December 17. I had not planned to prepare an examination for January 10, and my client had not planned to attend a hearing on January 10.

Your Order of December 17 contemplates essentially three activities on January 10: (1) the admission session on exhibits, (2) a discussion of privilege issues raised by the examination of Mike Lehmkuhl and (3) a discussion of the manner of proceeding with the Internal Audit Report continuing to be unavailable. In addition, pursuant to your Order of December 24, TWCNYC will make a written submission on January 9 as to why the testimony of Tony Ontiveros is needed; and this, presumably, also will be discussed.<sup>1</sup> Thus, there are three matters in limine to be dealt with *in addition to the exhibits*.

The fact that there are no disputes about the authenticity of any of the exhibits, a point made in Mr. Beglieter's letter, should surprise no one. Indeed, your honor observed at the prehearing conference that the universe of exhibits was fairly well-known to everyone, and your Order of December 17, 1996 anticipates that surprises or disputes about the exhibits is unlikely. The confirmed absence of any such disputes is, therefore, not a reason to re-schedule the balance of the hearing as Mr. Beglieter requests.

I am concerned that beginning testimony on Friday will be accompanied by pressure to finish the first witness — Howard Milstein — on that day. This may cause an unwelcome truncation of either the examination of Mr. Milstein or of discussion of the matters in limine that already were planned for that date.<sup>2</sup>

In addition, the proposed change creates a scheduling conflict for my client's representative. Robert Jacobs, vice president and general counsel of TWCNYC, had reserved

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<sup>1</sup>Even if the Order of December 24 had not required it, it was always the intention of TWCNYC to raise the issue of Mr. Ontiveros's testimony as a "rebuttal" witness in a formal way at the January 10 pretrial. The inclusion of his name on the proposed witness list was simply to give notice of that intention.

The Presiding Judge may recall that the mechanics of bringing TWCNYC's desire to call Mr. Ontiveros as a witness before the Presiding Judge were discussed by counsel at the last prehearing conference, held on December 12.

, it is the intention of TWCNYC and Cablevision to present on January 10 a constructive, compromise proposal for dealing with the Report in this Proceeding. Since the Presiding Judge has already accepted Liberty's argument that the D.C. Circuit stay pending appeal of the Commission's Order precludes *mandated* disclosure of the Report, whatever compromise regarding some limited disclosure of the Report that may be reached cannot be effective without Liberty's assent. Accordingly, there may be considerable discussion if the parties are willing to negotiate in good faith.

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January 13-15 for attending the hearing, based on your Order of December 17. Relying on the dates in that Order, he had scheduled a meeting with third parties on Friday, January 10, that would preclude his attendance at a hearing in Washington. Mr. Jacobs is TWCNYC's principal executive in this case and in other matters that relate to Liberty cable.

It would be unfair to him to reschedule this hearing on short notice to a date on which he is unable to attend.

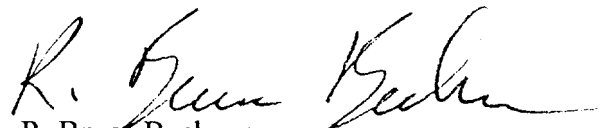
Finally, while I do not have a direct conflict with a hearing on January 10, I had not planned to conduct a cross examination of any witness before Monday, January 13. I was planning to use the weekend days of January 11 and 12 to prepare the cross examination of all the witnesses. Moreover, my ability to conduct an examination on January 10 is further hindered by

the preparation of the various papers mandated by the Presiding Judge in this proceeding and responsibilities unrelated to this case have given me a very tight schedule. Advancing the commencement of testimony in this hearing to eliminate a weekend for preparation makes it uncomfortably so.

In short, the possible benefit associated with commencing testimony a half-day earlier than originally planned does not, in my opinion, outweigh the costs of potentially sacrificing an orderly consideration of the issues in limine and an orderly and complete examination of the first witness as well as the actual disruption of my personal schedule and that of my client's representative, both made in reliance on the dates previously agreed to and Ordered by the Presiding Judge.

Counsel for Cablevision of New York City - Phase I ("Cablevision") has authorized me to state that Cablevision joins in this opposition.

Respectfully yours,



R. Bruce Beckner

Counsel for

Time Warner Cable of New York City  
and

Paragon Cable Manhattan

cc (by facsimile): All counsel

**CERTIFICATE OF SERVICE**

I, Debra A. McGuire, hereby certify that a copy of the foregoing Time Warner Cable of New York City and Paragon Communications' Notice of Placing Letter in the Public Record was served via first class mail, this 20th day of June, 1997, upon the following parties:

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